

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 33415 of 2006(C)

OS.1003/2005 of II ADDL.M.C.,TRIVANDRUM
.....

PETITIONER:

SUNANDA, W/O.SURENDRAN. P.K.,
SOUPARNIKA, PADINJATHIL LANE, PRA-8,
KUMARAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

ANIS ABDUL MAJEED,
T.C.NO.14/1227, PADINJATTIL LANE,
KUMARAPURAM, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPLURAM, REPRESENTED BY
POWER OF ATTORNEY HOLDER, JAMMELA ABDUL MAJEED.

BY ADV. SRI.P.A.AHAMMED
SRI.THOUFEEK AHAMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.1003/05 BEFORE THE 2ND ADDL.MUNSIFF'S COURT, THIRUVANANTHAPLURAM DT.11.7.2005

EXT.P2: -DO- OF THE AMENDMENT PETITION IN I.A.NO: 10179/06 IN O.S.NO: 1003/05 BEFORE THE 2ND ADDL. MUNSIFF'S COURT, THIRUVANANTHAPLURAM DT.29.11.2006

EXT.P3: -DO- OF THE AMENDMENT ORDER IN I.A.NO:10179/06 IN O.S.NO: 1003/05 BEFORE THE 2ND ADDL.MUNSIFF'S COURT, THIRUVANANTHAPLURAM DT.2.12.2006

EXT.P4: -DO- OF THE REVIEW PETITION IN I.A. 10342/06 IN O.S.1003/05 BEFORE THE 2ND ADDL. MUNSIFF'S COURT, THIRUVANANTHAPLURAM DT.5.12.2006

jj

/TRUE COPY/

P.S.TO JUDGE

M.N.KRISHNAN, J.

WP(C) .No. 33415 OF 2006 C

Dated this the 8th June, 2007.

JUDGMENT

This writ petition is filed to quash Ext.P3 order and for a disposal of Ext.P4 petition. The brief facts are that the plaintiff instituted a suit for an injunction and a reading of para 3 of the plaint would indicate that he has pleaded that the plaintiff and his predecessor in interest were using the B schedule pathway for more than 20 years and they had prescribed right of easement through the said pathway. Subsequently plaintiff filed an amendment application and he also incorporated the plea of easement by grant on the basis of a document. Now the present petition wherein an order is passed plaintiff propose to have an amendment to the plaint by incorporating the necessary ingredients to constitute the plea of easement by prescription and he wants to delete the prayer with respect to easement of grant. It is a settled principle that whenever a person claims right of easement being a restrictive right which interferes with the enjoyment of property by another person there must be specific pleadings. It is true that the present plaintiff should not have blown hot and cold at the same time raising inconsistent pleas, that too in the form of amendments.

But now it appears that the plaintiff has finally settled down and decided to claim the plea of easement by prescription. But it is only an elaboration of what has been pleaded earlier in para 3 of the plaint. So, the basic structure of the pleading remains intact and what is required by the plaintiff is to qualify with the necessary averments in the pleading which is sine qua non in a suit where the plaintiff claims injunction. Therefore, the trial court has not erred in allowing the application for amendment and therefore that order does not call for any interference. It has further to be stated that when amendment is allowed at this stage sufficient opportunity must be given to the defendants to put forth their plea and also regarding the inconsistent pleas earlier taken by the plaintiff. If necessary additional issues may also be framed and the parties may be permitted to produce materials or adduce evidence in support of their respective contentions. Therefore, with these observations the writ petition is disposed of. Since I have upheld the order of amendment, the question of review application being considered does not loom large. There is a grievance for the learned counsel for the petitioner that his client was not given an opportunity to file a counter statement to the amendment application. I feel, even if she has filed a

counter statement, taking into consideration the nature of the averments the decision would not have been different.

M.N.KRISHNAN
Judge